IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Weis, supt. of police city of Chicago, Plaintiff,

v.

Aaron Washington Defendants.

No. ~~04 CH 35255~~

Judge S. H. Hall

ORDER

This matter comming before this court on Plaintiff's complaint for administrative review both parties having briefed this matter fully and oral arguments having been heard on Jan. 27, 2011, this court having issued its decision in written on April 22, 2011 and adopting it hereto.

Atty. No.: 90909

Name: Mara Georges/ Wynter Jackson

Atty. for: City of Chicago

Address: 30 N LaSalle, #1040

City/State/Zip: Chicago, IL 60602

Telephone: 312 744 4761

ENTERED:

ENTERED
JUDGE SOPHIA H. HALL-0162
APR 22 2011
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY
DEPUTY CLERK

Dated:

Judge **Judge's No.**

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

JODY P. WEIS, SUPERINTENDENT OF POLICE OF THE CITY OF CHICAGO	)	
Plaintiff,	)	No. 09 CH 35255
v.	)	Hon. Sophia H. Hall
AARON WASHINGTON and THE POLICE BOARD OF THE CITY OF CHICAGO	)	
Defendants.	)	

DECISION

This case comes before the Court on Petitioner Jody P. Weis' Petition for Administrative Review. Weis is the Superintendent of the City of Chicago Police Department and seeks review of the Chicago Police Board's ("Board") August 20, 2009 Findings and Decision which found respondent Aaron Washington ("Respondent") guilty of violating certain rules in Article V of the Rules and Regulations of the Department. Weis seeks administrative review of the Board's decision suspending Respondent for twelve months, and conditioning reinstatement upon completion of an approved alcohol abuse counseling and being found psychologically fit for duty, rather than discharging him.

In its Findings and Decision, the Board found Respondent guilty of violating all of the alleged rule violations of Article V of the Rules and Regulations of the Department. The Board found Respondent guilty of violating Rule 1 (Violation of any law or ordinance); Rule 2 (Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department); Rule 6 (Disobedience of an order or directive, whether written or oral); Rule 7 (Insubordination or disrespect toward a supervisory member on or off duty); Rule 8 (Disrespect to or maltreatment of any person, while on or off duty); Rule 9 (Engaging in any unjustified verbal or physical altercation with any person while on or off duty); Rule 14 (Making a false report, written or oral); and Rule 15 (Intoxication on or off duty).

The findings stemmed from a domestic altercation Respondent had with his wife, Mrs. Washington, in the early morning of January 1, 2007. The Board found that Respondent was an off duty police officer on January 1, 2007, and that he and his wife had been separated for three years. In the early morning hours of the 1st, Respondent was intoxicated and argued with Mrs. Washington in his parked car outside of Mrs. Washington's house. Respondent proceeded to say that the marriage was over and an

unknown female called Respondent's phone, leading Mrs. Washington to question Respondent. Respondent then punched her twice in the face. Mrs. Washington grabbed his phone, jumped out of the car and threw the phone. Respondent exited the car, grabbed Mrs. Washington's hair, threw her down, broke her phone, and then kicked her in the ribs. Respondent then drove off in his car and Mrs. Washington went into her house and called the police at 3:42 a.m.

Respondent returned to Mrs. Washington's house right before the police arrived. Mrs. Washington let the Sergeant Rotkovich, Officer Stoyis, and Officer Hanrahan into the house and told them about the domestic violence incident. Sergeant Rotkovich yelled out Respondent's name, told him who was in the house, and told him to come downstairs. Respondent did not obey Sergeant Rotkovich, instead replying "Fuck you and get out of my house now." Sergeant Rotkovich then told Respondent they couldn't leave until the matter was resolved, and that Respondent needed to come down. Again, Respondent disobeyed and told the officers to get out of the house. Sergeant Rotkovich then told Respondent that he was giving him a direct order to come downstairs and turn over his weapon; again Respondent refused to comply. Finally, Officer Stoyis was able to get Respondent to come down stairs.

After Respondent came downstairs, the officers took away Respondent's weapon and took him to the front porch to effectuate the arrest. During the arrest the Respondent admitted that he knew that Rotkovich was a sergeant, that he had used profanity towards Sergeant Rotkovich, and that he was insubordinate and disrespectful to Sergeant Rotkovich. Respondent also admitted that he had been drinking that night, that he was intoxicated while in possession of his firearm, that his alcohol level was over the legal limit, and that he had been driving that night.

Respondent and Mrs. Washington were both taken to the Fourth District Police Station. While at the Fourth District, Sergeant Cochran from the Department's Internal Affairs Division met with Respondent and ordered him to provide a urine sample, which he did. Respondent signed a Drug Test Specimen Affidavit and checked the vial numbers on his specimen. Officer Webb was responsible for drafting the case report and interviewed Mrs. Washington. Officer Webb testified that Mrs. Washington had a swollen face and an injury on her lip. Officer Webb drafted the case report documenting the events of that morning and then drafted a misdemeanor complaint for domestic battery, which Mrs. Washington signed. After the misdemeanor complaint was filed, Mrs. Washington was taken to the emergency room in an ambulance. Mrs. Washington testified that she was experiencing bad headaches and rib pains.

On October 11, 2007, the Independent Police Review Authority ("IPRA") investigator, Alice Chico, met with Respondent to investigate the January 1, 2007 incident. Prior to giving his statement, Respondent was read his administrative rights and informed that he had been charged with domestic violence and intoxication. Chico testified that Respondent denied striking Mrs. Washington in the mouth with his fists, denied shoving her to the ground, kicking her in the ribs, and grabbing her hair. Ms. Chico did not get a statement from Mrs. Washington because she refused to cooperate.

Mrs. Washington also signed a "dropped complaint" form in January of 2007, indicating that she did not want to go forward with the charges.

On December 10, 2008, Superintendent Weis filed charges at the Board seeking the discharge of Respondent. The Board caused a hearing to be held before Hearing Officer Jacqueline Walker on May 14, June 5, July 20, and July 29, 2009.

At the Board's hearing, Respondent presented testimony from Officer Belinda Williams-Lee, a friend of 19 years, and Officer Earl Hicks, who respectively testified that Respondent is an honest man and well-respected. Respondent also presented Officer James Morrison, an alcohol and substance abuse counselor for the Department's Employee Assistance Program, who testified about the program and stated that he was Respondent's "main counselor."

On August 20, 2009, the Board entered its Findings and Decision, finding Respondent guilty of all of the alleged rule violations. It also attached Respondent's complimentary and disciplinary history which included three department commendations, six complimentary letters and forty-five honorable mentions. The Board suspended Respondent for a year, and conditioned Respondent's reinstatement upon completion of an approved alcohol abuse counseling program and being found psychologically fit for duty after a psychological examination.

Weis now seeks administrative review of the Board's decision to suspend Respondent rather than discharge him.

The standard this Court must use on review of an agency's selection of discipline imposed for a violation of the agency's rules is not disputed. There is a two step process on review, first to determine if the Board's findings of fact are against the manifest weight of the evidence, and, second, whether sufficient basis for the discipline exists. *Walsh v. Bd. of Fire and Police Comm'rs of the Village of Orland Park*, 96 Ill. 2d 101, 105 (1983). In *Wilson v. Bd. of Fire and Police Comm'rs*, 205 Ill. App. 3d 984, 992 (1st Dist. 1990), the court stated:

> Having found the question of guilt supported by the record, we next consider whether the Board's findings provided sufficient basis for the sanctions that were imposed. In making this determination this court may not consider whether it would have imposed a more lenient disciplinary sentence. Review is limited to a determination of whether the Board acted unreasonably or arbitrarily by selecting a type of discipline that was inappropriate or unrelated to the needs of the service. (Citations omitted).

Superintendent Weis does not dispute the findings of fact of the Board. Weis, first, argues that suspension, rather than discharge, was arbitrary, capricious, and unrelated to the needs of the Department. Second, Weis argues that the Board abused its

authority under Illinois Municipal Code, 65 Ill. Comp. State. 5/10-1-18.1 (2004), and the Chicago Municipal Code, by imposing conditions for Respondent's reinstatement.

I. Appropriateness of the Sanction

Weis argues that the imposition of suspension was arbitrary, unreasonable and unrelated to the Department's needs because the violations provided ample cause for discharge. He cites several cases where discharge was affirmed in circumstances less serious than in the instant case to persuade the Court that suspension, rather than discharge, is inappropriate and unrelated to needs of the police department.

Where discharge is the discipline imposed, the court must give considerable deference to the Board's determination of what constitutes cause for discharge. *Kappel v. Police Bd.*, 220 Ill. App. 3d 580, 589-90 (1st Dist. 1991). The Board's decision will stand, so long as a reasonable, non-arbitrary rationale exists, regardless of whether the court were to consider another sanction more appropriate. *Id.* at 590. The standard, correspondingly, would apply to this Court's review of the Board's imposition of suspension, and this Court should not, therefore, consider whether it would impose a harsher discipline. *Wilson*, *supra*, at 992.

Weis argues that, in Illinois, a single finding of a violation of departmental rules can be cause for the dismissal of a public employee. *McCleary v. Bd. of Fire & Police Comm'n*, 251 Ill. App. 3d 988 (2d Dist. 1993). In *Kappel* v. *Police Bd.*, 220 Ill. App. 3d 580 (1st Dist. 1991), the court affirmed the Board's discharge of an officer who had sold an unregistered handgun with the serial number removed. The court also affirmed the Board's discharge of an officer in *Siwek v. Police Bd.*, 374 Ill. App. 3d 735 (1st Dist. 2007), where the officer was found to have violated the rules by having other employment while on paid medical leave. In addition, lying is a cause for termination as was found and affirmed in *Valio v. Bd. of Fire & Police Comm'rs,* 311 Ill. App. 3d 321 (2d Dist. 2000). Discharge is an appropriate sanction when a police officer's misconduct manifests a disrespect for the law and undermines public confidence in the police force. *Kappel*, 220 Ill. App. 3d at 592.

Weis, further, argues that police departments are paramilitary organizations that require disciplined officers to effectively operate, and that Illinois courts have held that discipline through sanctions for disobedience of rules, regulations, and orders is appropriate and related to the police force's needs. *See Siwek*, 374 Ill. App. 3d at 738. For these reasons, Weis argues that under the facts of the instant case, there was cause for discharge, and the Board's discipline of suspending Respondent is inappropriate or unrelated to the needs of the Department.

Respondent argues that *Kappel*, *Siwek*, and *McCleary* are not relevant because in those cases the discipline was discharge, and the court had to determine whether the record in those cases provided sufficient evidence showing cause for discharge. This Court agrees.

The Court finds that the cases cited by Weis do not address the issue here, which is whether the Board's imposition of suspension where cause for discharge exists is inappropriate or unrelated to the needs of the Department. While an officer's violation of the law may be "cause" for discharge, Weis cites to no case which holds that the Board is required to discharge. This Court may not decide whether a more stringent punishment is appropriate, but rather must decide whether the lesser discipline is arbitrary, unreasonable or unrelated to the requirements of the Department.

In making this determination, the court's statement in *Kappel*, 220 Ill. App. 3d at 590, is instructive.

> The Board's decision will stand even if the court were to consider another sanction more appropriate. The court cannot sit as a super-commission in reviewing the punishment imposed. It is the Board, rather than the court, which is best able to determine the effect of the officer's conduct on the proper operation of the department. The wisdom, necessity or propriety of any action regarding the administration of a police force is within the province of the municipality. (Citations omitted).

Cases, cited by Respondent, support instances where Illinois courts have found the Board's discharge of an officer to be unwarranted, including some instances where the officer was found to have violated the law. In *Massingale v. Police Board*, 140 Ill. App. 3d 378, 379-80 (1st Dist. 1986), the court reversed the Board's discharge of an officer who had pled guilty to reckless driving, and whom the Board found had driven under the influence of alcohol. *See also Kirsch v. Rochford*, 55 Ill. App. 3d 1042 (1st Dist. 1977).

This Court has reviewed the record below which contains the full circumstances of Respondent's rule violations and his history with the police force. While discharge may have been appropriate in cases cited by Weis, this Court finds that the Board's discipline of suspension based on the record is not arbitrary, capricious, inappropriate or unrelated to the needs of the police department. As a result, the Court affirms the Board.

II. Board's Authority to Impose Conditions of Respondent's Reinstatement

Weis also argues that the Board exceeded its authority when it imposed conditions upon Respondent's return to the Department. Specifically, the Board required that Respondent complete an alcohol abuse program and pass a psychological examination.

The Board's authority to remove, discharge or suspend employees is granted under the Illinois Municipal Code 65 ILCS 5/10-1-18.1 (2004) and the Municipal Code of Chicago, sec. 2-84-020, et seq.

Section 10-1-18.1 of the Illinois Municipal Code states:

> In any municipality of more than 500,000 population, no officer or employee of the police department in the classified civil service of the municipality whose appointment has become complete may be removed or discharged, or suspended for more than 30 days except for cause upon written charges and after an opportunity to be heard in his own defense by the Police Board.... Upon the filing of charges for which removal or discharge, or suspension of more than 30 days is recommended a hearing before the Police Board shall be held..... A majority of the members of the Police Board must concur in the entry of any disciplinary recommendation or action.

Section 2-84-030 of the Municipal, Code of Chicago, entitled "Police Board. Powers and Duties" states:

> The board shall exercise the following powers: .... (4) Serve as a board to hear disciplinary actions for which a suspension for more than the 30 days expressly reserved to the superintendent is recommended, or removal or discharge involving officers and employees of the police department in the classified civil service of the city. ... A majority of the members of the police board must concur in the entry of any disciplinary recommendation or action.

Weis argues that the Board's authority is limited to that provided by the legislative act that created the Board. *See Granite City Div. of Nat'l Steel Co. v. Ill. Pollution Control Bd.*, 155 Ill. 2d 149, 161-62 (1993). Weis argues that neither the Illinois Municipal Code, nor the Chicago Municipal Code, give the Board the authority to suspend with conditions for Respondent's return. Weis argues that requiring successful completion of the alcohol abuse program and the psychological examination is not akin to imposing discipline and would be problematic because it would give the Board limitless power to impose conditions.

Respondent argues that this Court should not even consider the issue of whether the Board could impose conditions for Respondent's return. First, Respondent argues that this issue is moot because Respondent has already completed the Board's required conditions.

In *In re Adoption of Walgreen*, 186 Ill. 2d 362, 365 (1999), the court recognized an exception to the mootness doctrine "when the question involved is of a public nature, the circumstances are likely to recur, and an authoritative determination for the future guidance of public officers is desirable." Here, this Court finds that the Board's imposition of conditions is of a public nature since the police department is a public entity. The Board's imposition of conditions for reinstatement are likely to arise in other cases, and the Court finds that guidance of the issue for the Board is desirable. Accordingly, the issue is not moot.

Second, Respondent argues that Weis' argument about whether the Board exceeded its power is not properly before this Court because Weis did not raise this issue

during the administrative proceedings or in his complaint for judicial review. *Fox v. Civil Service Com.*, 66 Ill. App. 3d 381, 393 (1978) (Arguments may only be considered on judicial review if they are raised by the administrative record.).

Weis argues that it could not have raised the issue of the Board's authority to impose conditions for reinstatement during the administrative proceedings because the issue did not arise until the Board issued its Findings and Decision which imposed the discipline and concluded the administrative proceedings. Weis also argues that its Complaint for Administrative Review sufficiently raises the issue of the Board's authority to suspend and impose conditions for reinstatement through paragraph 13(e) of the complaint. Paragraph 13(e) states that "[p]laintiff relies on all of the other errors that are in the Board's discretion and the record of proceedings before the Police Board ..."

The Court finds that paragraph 13(e) of the complaint does not sufficiently raise the issue of the Board exceeding its authority by suspending and imposing conditions for Respondent's reinstatement.

Finally, Respondent argues that even if the Court does address the merits of Weis' argument, the Board was acting within its power when imposing the conditions for Respondent's return. Respondent argues that there is no language in 65 ILCS 5/10-1-18.1 and Mun. Code of Chicago, sec. 2-84-030 that limits the Board's ability to suspend and add to that suspension conditions on an employee's return because the sections do not specify the types of discipline the Board has authority to impose.

In construing the provisions, this Court can look to the expertise and experience of the agency. The agency's experience is contained in the Board's own "*Allegations of Police Misconduct: A guide to the Complaint and Disciplinary Process* (Dec. 2007)." Under the section titled "Police Board Procedures," it states that "[t]he penalty may be discharge or suspension without pay (in certain types of cases the Board may attach conditions to a suspension, such as treatment for alcohol abuse or domestic violence)." The Court "should defer to the administrative agency's expertise and experience in determining the appropriate sanction to protect the public interest." *O'Neil v. Rodriguez*, 298 Ill. App. 3d 897, 904 (1st Dist. 1998).

The Court agrees with Respondent and finds that the Board did not exceed its authority in suspending with conditions for reinstatement. Nothing in 65 ILCS 5/10-1-18.1 and Mun. Code of Chicago, sec. 2-84-030 limits the Board's authority to impose a suspension with conditions.

CONCLUSION

For the reasons stated above, the Court affirms the Board's decision.

Entered _____

Date _____

ENTERED
JUDGE SOPHIA H. HALL-0162
APR 22 2011
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK